



NEW YORK CITY POLICE DEPARTMENT  
OFFICE OF DEPUTY COMMISSIONER LEGAL MATTERS

# LEGAL BUREAU BULLETIN

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**I. SUBJECT:**

**LAWS OF 2013**

**II. INTRODUCTION**

**SET FORTH ARE VARIOUS AMENDMENTS AND NEW LAWS  
ENACTED DURING 2013 WHICH ARE OF INTEREST TO MEMBERS  
OF THE SERVICE**

**NOTE:** New matter is set in *italics*. All new laws are in effect as of the date of publication of this Bulletin unless otherwise indicated. Because of the abbreviated descriptions of new laws contained in this Bulletin, it is strongly recommended that members of the service read the applicable law before taking enforcement action, and direct any questions they may have to the Legal Bureau.

## **STATE LAWS**

### **ALCOHOLIC BEVERAGE CONTROL LAW**

#### **BEER WHOLESALERS CHAPTER 505, LAWS OF 2012; CHAPTER 2**

Chapter 505 of the Laws of 2012, as amended by Chapter 2 of the Laws of 2013, creates a new subparagraph 4 of Alcoholic Beverage Control Law Section 104(1)(a) which allows beer wholesalers authorized to sell beer at retail to sell a variety of additional products, including: candy; salsa; barbecue, picnic and beach supplies; beer-related equipment and reading material; glassware; a limited amount of citrus fruit; snow removal supplies; firewood; and prepaid telephone cards. Wholesalers are also permitted to maintain one ATM on their premises.

### **CIVIL SERVICE LAW**

#### **ADDITIONAL POINTS ON CIVIL SERVICE EXAMS CHAPTER 376**

The Civil Service Law grants an additional ten points on civil service exams for certain specified family members of police officers, firefighters, emergency medical technicians (EMTs), and paramedics killed in the line of duty. The additional ten points are awarded to

those who have taken and passed a competitive exam for a position in the same municipality in which their family member served, and have successfully applied for the additional credit.

Chapter 376 amends Sections 85-a, 85-b and 85-c of the Civil Service Law to clarify and expand the granting of these additional points. It expands the prior law covering the awarding of additional points to children of police officers and firefighters killed in the line of duty, to include siblings. The new law also expands the list of deceased public servants whose death in the line of duty will afford the credit, to include paramedics and EMTs. Finally, Chapter 376 also corrects perceived inconsistencies contained in the prior law and explicitly provides that the death of one of the enumerated first responders as a result of the September 11<sup>th</sup> attack or the subsequent rescue effort is the equivalent of a death in the line of duty for purposes of the law.

## **CRIMINAL PROCEDURE LAW**

### **PEACE OFFICER STATUS TO FEDERAL EPA SPECIAL AGENTS CHAPTER 366**

Chapter 366 amends Section 2.15 of the Criminal Procedure Law by adding a new subdivision 28 to expand the list of federal law enforcement officers given limited State peace officer powers to include United States Environmental Protection Agency (EPA) special agents with law enforcement authority.

### **ORDERS OF PROTECTION IN FAMILY OFFENSE CASES CHAPTER 480**

Chapter 480 amends the Domestic Relations Law, Family Court Act and Criminal Procedure Law regarding orders of protection and temporary orders of protection issued in a domestic violence or family offense context, to state that the person protected by the order *may not be held to violate the order and may not be arrested for any such violation*. The orders of protection are now required to bear a notice stating that the order will remain in effect *even if the protected party consents to have contact with the offender, and that the order may only be terminated or modified by the court*. The order will further include notice of the explicit prohibition against finding the victim to have committed a violation or arresting them.

Note that Chapter 480 does not make a similar amendment to Criminal Procedure Law Section 530.13, and therefore does not afford this new protection to the victim where the order of protection is issued outside of the family offense realm.

### **EXPANSION OF CRIMES DESIGNATED AS FAMILY OFFENSES CHAPTER 526**

Chapter 526 amends Criminal Procedure Law Section 530.11(1) and Family Court Act Section 812(1) to expand the list of crimes designated as family offenses, over which the Criminal Court and the Family Court have concurrent jurisdiction. The law is intended to provide additional protection to domestic violence victims whose abusers use economic means against them, including the theft of money or important documents.

The law now provides that the following crimes committed against a member of the same family or household are designated family offenses:

- Identity Theft in the 3<sup>rd</sup>, 2<sup>nd</sup> and 1<sup>st</sup> degrees (Penal Law Sections 190.78, 190.79 and 190.80, respectively)
- Grand Larceny in the 4<sup>th</sup> and 3<sup>rd</sup> degrees (Penal Law Sections 155.30 and 155.35, respectively)
- Coercion in the 2<sup>nd</sup> degree involving threat of physical injury, property damage, or other conduct constituting a crime (Penal Law Section 135.60, subdivisions 1, 2 and 3)

The law also amends Criminal Procedure Law Section 530.12(1), and several sections of the Family Court Act and Domestic Relations Law, to expressly authorize courts to include new conditions in orders of protection. Offenders may be ordered to promptly return specified identification documents to the victim, in a manner directed by the order, with appropriate provisions ensuring that documents are made available as evidence if needed, or made available to the offender for legitimate use. Identification documents are defined in the new law to include birth certificates, passports, social security cards, health insurance or other benefits cards, bank cards or documents, tax returns, driver's licenses, and immigration documents. In addition, the court may, after notice and hearing, order the offender to transfer to the victim documents or cards reflecting joint use or ownership, if transfer is necessary or appropriate.

Please note that Chapter 526 does not amend Criminal Procedure Law Section 530.13, and therefore does not add this new category of protection for the victim where the order of protection is issued outside of the family offense realm.

*See Interim Order 2, series 2014.*

#### **PROSTITUTION OFFENSES COMMITTED BY 16 AND 17 YEAR OLDS CHAPTER 555; CHAPTER 402, LAWS OF 2014**

Chapter 555, as supplemented and amended by Chapter 402 of the Laws of 2014, add to and amend the Criminal Procedure Law and Penal Law as they apply to certain prostitution offenses. The new laws are intended to modify the manner in which persons aged 16 or 17 are treated following an arrest for prostitution or loitering for the purpose of prostitution, in order to provide opportunity for the court to treat the defendant as a sexually exploited child rather than as a criminal.

Where a person is arrested for prostitution (Penal Law Section 230.00) or loitering for the purpose of prostitution (Penal Law Section 240.37(2)), and the person is aged 16 or 17 at the time the offense is committed, Chapter 402 amends CPL Section 170.30 to allow the court to dismiss the charge after arraignment in the interests of justice, if the court determines that the defendant participated in services provided to him or her. This relief is not available to those arrested for loitering for the purpose of patronizing a prostitute or promoting prostitution, but only for those who loiter for the purpose of engaging in prostitution itself.

Parallel amendments are made to CPL Section 170.80 to give the court the authority to conditionally convert the charge against the defendant into a "person in need of supervision" ("PINS") proceeding, for the purpose of requiring the defendant to receive social services. The

District Attorney may apply to the court to restore the criminal charge if the court finds that the defendant has failed to cooperate or comply with the conditions imposed as part of the PINS conversion.

Chapter 402 also conforms the CPL's "youthful offender" provisions to ensure that a 16- or 17-year old convicted of prostitution or loitering for prostitution (excluding loitering to patronize) will be granted youthful offender status, with records of the charge sealed, notwithstanding whether they may have otherwise not qualified for youthful offender treatment because of other convictions or youthful offender findings against them. CPL Section 720.35(1) is amended to provide that the defendant will be considered a "sexually exploited child" and will not be considered as an adult for purposes of the youthful offender proceeding. Finally, Chapter 402 amends Penal Law Section 60.02 to state that in these cases, if there is a youthful offender adjudication, the court must impose a sentence as if the person is convicted of a violation, and if the court imposes a revocable sentence, it may order any of the specialized services available to a sexually exploited child or which could be ordered in a PINS proceeding.

## **ENVIRONMENTAL CONSERVATION LAW**

### **PROHIBITION AGAINST SALE OF SHARK FINS CHAPTER 171**

Chapter 171 amends Environmental Conservation Law Section 13-0338 to prohibit the possession, sale, offer to sell, trade or distribution of shark fins. The new law defines "shark fin" as *the raw, dried or otherwise processed detached fin including the shark's tail*. The prohibition does not apply if the shark fin was from a spiny or smooth dogfish that was lawfully caught by a licensed commercial fisherman, or the shark was lawfully caught by someone with a recreational marine fishing registration or a license or permit for bona fide scientific research or educational purposes. Violation of the prohibition is a criminal offense, punishable by up to 15 days' imprisonment and/or a fine of at least \$250, depending upon how many shark fins are possessed or sold.

## **EXECUTIVE LAW**

### **NYS OFFICE OF VICTIM SERVICES AWARDS FOR CRIME SCENE CLEANUP CHAPTER 119**

Chapter 119 amends Executive Law Sections 624(1) and 631 to authorize the New York State Office of Victim Services (OVS) to make awards for crime scene clean-up to certain family members who resided with a victim who died as a result of the crime. The law allows a *surviving spouse, child or stepchild of the victim to make a claim for reimbursement of the cost of crime scene clean-up (up to \$2,500), if the crime occurred in the shared residence*. OVS is limited to making no more than one award for crime scene clean-up at an affected residence.

## **RELOCATION EXPENSES FOR CRIME VICTIMS CHAPTER 261**

Chapter 261 amends Executive Law Section 621(23), regarding crime victims' relocation expenses, to authorize the NYS Office of Victim Services to include the expenses of other household members when an award for relocation expenses is granted to a crime victim. The law provides that when an award is made to a crime victim for relocation expenses, the award is to include the *reasonable costs of moving and transporting the victim's spouse and any dependents with whom they reside*. For a child victim, the award would include expenses of the child victim's parent, stepparent or guardian, as well as any other dependents of the parent, stepparent or guardian, who reside in the household.

## **GENERAL BUSINESS LAW**

### **COUNTERFEIT AIRBAGS CHAPTER 201**

Chapter 201 adds a new Section 349-e to the General Business Law, entitled "Counterfeit and Non-Functional Airbags," intended to address the trafficking of counterfeit airbags. The law makes it a class A misdemeanor to knowingly: *make, distribute, offer to distribute, sell, or offer to sell a counterfeit or non-functional airbag; install or reinstall a counterfeit or non-functional airbag in a motor vehicle; distribute, offer to distribute, sell, offer to sell, install or reinstall a counterfeit or non-functioning airbag so that the "readiness indicator light" falsely indicates that the airbag is in proper working order; or represent to another person that a counterfeit or non-functional airbag that is installed or reinstalled in a motor vehicle is an airbag.*

The new law defines "airbag" as *any component of an inflatable restraint system...that is designed for the specific make, model, and year of the motor vehicle to be installed and operated in the event of a crash*. A "counterfeit airbag" is defined as an airbag *that bears, without authorization, a mark identical with or substantially similar to, the genuine mark of the vehicle manufacturer*. A "non-functional airbag" is defined as a *replacement airbag that has been previously deployed or damaged or that has an electrical fault that is detected by a readiness indicator light*. It also includes any object installed to deceive the vehicle owner or operator into believing that a functional airbag is installed.

In addition to the criminal penalty, Chapter 201 authorizes the NYS Attorney General to seek injunctive relief and civil penalties where a violation involves 25 or more counterfeit and/or non-functional airbags, or any second or subsequent violation of the new law.

### **SALE OF NOVELTY LIGHTERS CHAPTER 359**

Chapter 359 adds a new Section 391-s to the General Business Law to prohibit distribution, sale, or offer to sell novelty lighters. Chapter 359 defines a "novelty lighter" as a lighter which, *due to the physical or audio features of the device, excluding its capability of producing a flame, would reasonably be expected to cause the lighter to be appealing or attractive to a child including, but not limited to, lighters that resemble a cartoon character, toy, gun, watch, musical instrument, vehicle, animal, beverage, sporting equipment or that is capable*

*of creating audio effects or displaying flashing lights.* The law does not apply to collectible novelty lighters manufactured before 1980 or novelty lighters not intended for sale or use in state as well as out of state.

The law requires the Division of Homeland Security and Emergency Services (DHSES) to establish and publicize a toll free hotline to receive information from the public about suspected violations. Violations are punishable by civil penalties enforced by DHSES or the State Attorney General. The law also authorizes police officers and designated peace officers to seize illegal novelty lighters and turn them over to the State Fire Administrator or his designee.

## **HIGHWAY LAW**

### **PETER FIGOSKI MEMORIAL BRIDGE CHAPTER 167**

Chapter 167 adds a new Section 343-aa to the Highway Law, designating the bridge on Route 109 which crosses Sunrise Highway in West Babylon, Suffolk County, as the *New York City Police Department Detective Peter Figoski Memorial Bridge*. The law is an honorary designation acknowledging the sacrifice of Det. Figoski on December 23, 2011, and does not change the official name of the bridge.

## **PENAL LAW**

### **NY SECURE AMMUNITION AND FIREARMS ENFORCEMENT (SAFE) ACT CHAPTERS 1, 55 PART FF, 98**

In early 2013, Governor Cuomo signed into law Chapter 1, the “NY Secure Ammunition and Firearms Enforcement (SAFE) Act,” which he characterized as enacting the toughest gun laws in the nation. Due to the length and complexity of the law, major provisions of general interest to the Department are summarized below, and an appendix is provided at the end of this bulletin with greater detail regarding the new crimes created by the law. Note that these summaries incorporate significant changes made to the original law by two subsequent laws – Chapter 55, Part FF and Chapter 98 – which among other changes added law enforcement exemptions to some of the new crimes Chapter 1 created.

Major provisions include:

- National Instant Criminal Background check required for all private sales of firearms, rifles and shotguns except between members of an immediate family. (*See FINEST Message No. 2023001 dated April 17, 2013.*)
- Extension of “Kendra’s Law,” regarding mandatory assisted outpatient treatment, through June, 2017, and increase (from 6 months to one year) of the allowable time period for which a judge may order mandatory assisted outpatient treatment.
- Simplified and expanded definition of a prohibited *assault weapon*, with limited exceptions, new restrictions on their transfer, and a requirement that grandfathered weapons be

registered with the State Police.

- New definition of “large capacity ammunition feeding devices” as those containing more than 7 rounds, in addition to the original definition as devices having the capacity for, or being readily convertible to accept, more than 10 rounds. .

- Increased criminal penalties and creation of new crimes addressing criminal use of firearms:

- Expanded definition of criminal facilitation to include making available a “community gun,” defined as a firearm that is actually shared or disposed of among or between two or more persons, which aids a person to commit a crime.
- Upgrade from a class A misdemeanor to a class E felony the criminal possession of a weapon on school grounds.
- Creation of a new felony crime, *criminal possession of a firearm*, making it a class E felony to possess an unloaded firearm or to fail to register a grandfathered assault weapon as required by the new law.
- Mandatory minimum sentence of 5 years for carrying a loaded firearm during a drug trafficking felony or violent felony offense; mandatory minimum sentence of 3-1/2 years if carrying an unloaded firearm during a violent felony offense.
- Amendment of assault in the 2<sup>nd</sup> degree to make it a class D felony to recklessly injure a child by intentional discharge of a firearm, rifle or shotgun.
- Upgrade and expansion of the class A misdemeanor of criminal purchase of a weapon to a class D felony, where one purchases a firearm, rifle or shotgun for oneself or another, or gives such a weapon to another, while knowing that it would be unlawful for the recipient to possess it.
- Creation of a new crime, *aggravated enterprise corruption*, where certain combinations of violent felonies or illegal transfers of weapons will constitute the basis for charging a gang with a class A-I felony, allowing a prosecutor to ask for a sentence of 25 years to life.

- Sellers of ammunition who are not licensed firearms dealers must register with the State Police and maintain transaction records. The new provision includes requiring every commercial ammunition sale to be conducted through a licensed dealer or registered ammunition seller, and to be reported to a State database so that it may be determined whether the proposed purchaser is eligible to possess ammunition.

***UPDATED NOTE: As of July, 2015 the new conditions on the sale of ammunition regarding the background check and database have been suspended by agreement between the State Senate and Governor Cuomo, and are not in effect.***

## **TRANSPORTATION AND POSSESSION OF A GAMBLING DEVICE CHAPTERS 46 AND 47**

Chapters 46 and 47 amend Penal Law Section 225.30 to add a new subdivision e, creating an exception to the crime of Possession of a Gambling Device, if the device’s manufacturer or distributor meets three conditions: 1) *filing a statement with the State Gaming Commission complying with Racing, Pari-Mutuel Wagering and Breeding Law Section 104(21) (discussed below); 2) transporting the device into the State in a sealed container solely for the*

*purpose of exhibition or marketing; and 3) thereafter transporting the device in a sealed container to a jurisdiction outside of the State for lawful purposes.*

Chapters 46 and 47 also add a new subdivision 21 to Racing, Pari-Mutuel Wagering and Breeding Law Section 104, outlining the requirements of the statement that must be filed in order to take advantage of the Penal Law exception. The statement must be filed before the device is brought into the State, and the filer must affirm under penalty of perjury that the device is being transported into the State in a sealed container for the sole purpose of exhibition or marketing. The statement must also specify the number and types of devices, the dates they will be in the State, not to exceed two weeks, and the identity of the person who will have custody of the devices. The filer must also state that the devices will thereafter be transported outside of the State for lawful purposes.

## **FIREWORKS DISPLAYS AND PYROTECHNIC PERMITS CHAPTER 127**

Chapter 127 amends Penal Law Sections 405.00 and 405.10 to designate the New York State Office of Fire Prevention and Control (OFPC) as the permit authority for fireworks displays and indoor pyrotechnics on State property, instead of giving that responsibility to the local authority (in the case of New York City, the Fire Department). The law requires OFPC to coordinate the issuance of permits for fireworks displays with the local police or fire department, or both, where there are such departments.

## **INCREASED PENALTIES FOR HARMING POLICE ANIMALS CHAPTER 162**

Chapter 162 adds a new Section 195.06-a to the Penal Law, entitled *Killing a Police Work Dog or Police Work Horse*, which provides that a person who intentionally kills a “police work dog” or “police work horse” while in the performance of their duties, and under the supervision of a police officer, will be guilty of a class E felony. For purposes of the new law, the terms “police work dog” or “police work horse” are defined as *any dog or horse owned or harbored by any state or municipal police department or any state or federal law enforcement agency which has been trained to aid law enforcement officers and is actually being used for police work purposes.*

It should be noted that the new law overlaps an already-existing Penal Law class A misdemeanor, “Killing or Injuring a Police Animal,” Penal Law Section 195.06, which is committed when someone intentionally kills or injures any animal when the animal is in the performance of its duties and under the supervision of a police or peace officer. Therefore, the felony crime will apply under a subset of these circumstances: the animal is a police dog or horse, is killed rather than injured, and is under the supervision of a police officer rather than a peace officer.

## **ASSAULT ON A CHILD – “JAY J’S LAW” CHAPTER 172**

Chapter 172, designated as “Jay J’s Law,” amends Penal Law Section 120.12, Aggravated Assault Upon a Person Less Than Eleven Years Old, which raises Assault in the 3<sup>rd</sup> degree committed against a child under 11 to a class E felony *if the offender has a prior*



conviction of an Assault in the 3<sup>rd</sup> degree of a child under 11. The law now provides that if the prior conviction occurred within the preceding ten years, rather than the preceding three years, the offender will be charged with the aggravated crime.

## **CRIMES ASSOCIATED WITH UPSTATE CASINO GAMING CHAPTERS 174 AND 175**

Chapters 174 and 175 create a new Article 13 in the Racing, Pari-Mutuel Wagering and Breeding Law, "Destination Resort Gaming," which is intended to provide a framework and regulate the operation of casino gambling in up to four locations in upstate New York. Although the new laws do not affect New York City directly, they have created several new Penal Law crimes which may come to the attention of members of the service. Chapters 174 and 175 add a new set of definitions to Penal Law Section 225.00, as well as a new set of crimes, Penal Law Sections 225.55 through 225.95, prohibiting several types of manipulation, fraud or interference in connection with authorized casino gaming and video lottery gaming.

However, Chapters 174 and 175 also add a new crime to Article 156, Offenses Involving Computers, "Operating an Unlawful Electronic Sweepstakes," a class E felony, which may be of more direct interest to the Department. The crime is committed when a person *knowingly possesses with intent to operate, or places into operation, a mechanically, electrically or electronically-operated device, to conduct or promote a sweepstakes through the use of what is termed an "entertaining display," defined as any visual information, capable of being seen by a sweepstakes entrant, that takes the form of actual game play or simulated game play.* Depending upon the nature of the activity being conducted, this new felony crime may provide an alternative enforcement mechanism to address gambling activity conducted in internet or "sweepstakes" cafés, which are generally governed by Administrative Code Sections 20-211 through 20-216, "Amusement Devices, Arcades and Operators."

## **AGGRAVATED HARASSMENT BY AN INMATE CHAPTER 180**

Chapter 180 amends Penal Law Section 240.32, Aggravated Harassment of an Employee by an Inmate, a class E felony, by expanding the definition of the crime to include an inmate's *throwing or tossing the contents of a toilet bowl at a correction officer, police officer or other employee in a correctional facility, mental hospital, or other secure facility.*

## **FORGERY OF A VEHICLE IDENTIFICATION NUMBER CHAPTER 186**

Chapter 186 amends Penal Law Section 170.65, "Forgery of a Vehicle Identification Number," adding a new subdivision 4. The new law makes it a class E felony when a person, *with intent to defraud, knowingly manufactures, produces, or reproduces a VIN label, sticker, or plate, not in accordance with the rules and regulations of the US National Highway Safety Administration and/or the Vehicle and Traffic Law.*

## **ASSAULT ON A PROSECUTOR CHAPTER 259**

Chapter 259 amends subdivisions 3 and 11 of Penal Law Section 120.05, Assault in the 2<sup>nd</sup> degree, a class D felony, by adding prosecutors to the list of individuals given enhanced protection against assault causing physical injury. The law upgrades Assault in the 3<sup>rd</sup> degree to Assault in the 2<sup>nd</sup> degree *when a prosecutor suffers physical injury caused by an intentional assault while the prosecutor is performing an assigned duty, or caused by someone intending to prevent the prosecutor from performing a lawful duty.*

## **PUBLIC HEALTH LAW**

### **SMOKING PROHIBITION IN PLAYGROUNDS CHAPTER 102**

Chapter 102 adds a new Section 1399-o-1 to the Public Health Law, prohibiting smoking in playgrounds. However, the law states specifically that it *does not apply* in New York City, which already has its own prohibition against smoking in playgrounds, contained in Administrative Code Section 17-503(c)(5). Playgrounds are defined in the Administrative Code as outdoor areas “open to the public where children play, which contains play equipment such as a sliding board, swing, jungle gym, sandbox, or see-saw, or which is designed as a play area,” and the Department of Health and Mental Hygiene has primary responsibility for enforcing the prohibition against smoking in New York City.

### **CONFINEMENT AND OBSERVATION WAIVER FOR POLICE DOGS CHAPTER 163**

Chapter 163 amends Public Health Law Section 2140(7), regarding the State-mandated 10-day period of confinement and observation of domesticated animals which bite someone, to ensure that they do not have rabies. Chapter 163 now allows police departments to apply for waivers from this 10-day period for their police work dogs, if they provide rabies vaccination records. Although the new law received local press attention, this State provision *does not apply* in New York City. Instead, the City is governed by the “Dangerous Dog Regulation and Protection Law,” Administrative Code Sections 17-342 through 17-354, which exempts law enforcement agencies from its mandates.

### **SMOKING PROHIBITION AT HOSPITALS AND NURSING HOMES CHAPTER 179**

Chapter 179 amends Public Health Law Section 1399-o by prohibiting smoking on the grounds of hospitals and residential health care facilities such as nursing homes. The law further *prohibits smoking within 15 feet of the exits and entrances of such locations.* However, residential health care facilities may allow smoking in designated areas on their grounds provided such area is not within 30 feet of any building. It should be noted that New York City Administrative Code Section 17-503(c)(6) already prohibits smoking in these locations, and is primarily enforced by the Department of Health and Mental Hygiene.

## **ADDITION OF SUBSTANCES AS SCHEDULE I STIMULANTS CHAPTER 341**

Chapter 341 amends Schedule I(f) of Public Health Law Section 3306, "Schedules of Controlled Substances," by adding 14 new paragraphs constituting "substituted cathinones," to the list of substances categorized as stimulants. The goal of this change is to prevent offenders from circumventing the prohibition against the sale or possession of "bath salts" by making minor alterations to the chemical composition of the drugs, in order to render them legal.

## **UNLAWFUL SHIPMENT OF CIGARETTES CHAPTER 342**

Chapter 342 amends the Public Health Law regarding the unlawful shipment or transport of cigarettes to persons located in New York State. The new law amends Public Health Law Section 1399-11(1) to include language that permits the shipment or transport of cigarettes to a government employee only when that individual *presents himself or herself as a government employee acting in accordance with official duties*. This change is intended to forestall a possible defense to a "sting" operation based on the fact that the recipient is in fact a government official.

The law also amends Section 1399-11(5) to provide that any person who unlawfully ships cigarettes to any unauthorized person in violation of Section 1399-11(1) is subject to not only a criminal penalty but also a civil penalty not to exceed either \$5,000 for each violation or \$100 per pack of cigarettes, whichever is greater. Both the State Attorney General and a local Corporation Counsel may bring an action to recover the civil penalties.

## **SAFE DISPOSAL OF UNUSED CONTROLLED SUBSTANCES CHAPTER 343**

Chapter 343 amends Public Health Law Section 3343-b, "Safe Disposal of Unused Controlled Substances," which governs the authority of the State Health Department to establish a program for safe disposal of controlled substances (other than Schedule I substances) by anonymous transfer to law enforcement agencies. Chapter 343 adds licensed pharmacies to the list of potential disposal sites, consistent with pending federal regulations. The designated licensed pharmacies would be *authorized to accept surrender of controlled substances from the public and temporarily store the substances prior to transferring them to an authorized disposal site*. It should be noted that local participation in the State program is not mandatory.

## **RESTRICTED ACCESS TO "DXM" CHAPTER 357**

Chapter 357 adds a new Section 391-s to the General Business Law, "Restricted Access to Retail Sale of Dextromethorphan, Commonly Known as 'DXM'." Dextromethorphan is commonly included as a cough suppressant in many over-the-counter medications. The law *prohibits retail establishments from offering for sale any product containing dextromethorphan as an active ingredient to persons under the age of 18 without a valid prescription*. Businesses are required to obtain proof of legal age, except if the purchaser reasonably appears to be at least 25; however, the buyer's appearance will not be a defense to underage sale. Violations are punishable by a \$250 fine.

## **PUBLIC SERVICE LAW**

### **NEW PHONE NUMBERS FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE CHAPTER 202**

Chapter 202 amends Public Service Law Section 91(7) to require telephone companies to provide new telephone numbers, without charge, for certain victims of domestic violence. Chapter 202 requires telephone companies to grant a new telephone number *within 15 days of a request from a domestic violence victim who presents to the provider a copy of a court-issued order of protection (other than a temporary order of protection)*. The new law also amends General Business Law Section 399-yy to impose an identical requirement on cable television companies which provide telephone service to the public.

## **TAX LAW**

### **UNSTAMPED CIGARETTES CHAPTER 59, PART O**

Chapter 59, Part O amends Section 481(1)(b)(i) of the Tax Law regarding various penalties for possession or sale of tobacco products that bear no evidence, such as a stamp or imprint, that obligatory cigarette and tobacco-related product taxes have been paid to New York State. Part O raises from \$150 to \$600 the maximum penalty which may be imposed by the State Commissioner of Taxation and Finance, in addition to other available penalties, for each 200 cigarettes in excess of 1,000 in unstamped or unlawfully stamped packages in the possession or under the control of any person.

## **VEHICLE AND TRAFFIC LAW**

### **FINES FOR DRIVING WHILE USING MOBILE PHONE OR PORTABLE ELECTRONIC DEVICE CHAPTER 55, PART C**

Chapter 55, Part C amends Vehicle and Traffic Law (VTL) Sections 1225-c and 1225-d to increase the fines for violating the prohibitions against driving while using, respectively, a mobile telephone or a portable electronic device, while the vehicle is in motion. Fines for violating both sections are now amended to be consistent: for a first violation, the fine will be a minimum of \$50 and a maximum of \$150. The law will now include increased penalties for multiple violations; the fine for a second violation within 18 months is a minimum of \$50 and a maximum of \$200, and for subsequent violations within 18 months, the minimum will be \$50 and the maximum is increased to \$400.

The new law also increases the mandatory State surcharge imposed upon convictions for most traffic infractions (but not including parking violations) from \$20 to \$28, and imposes a new \$25 surcharge for certain VTL parking violations. Note that the \$25 surcharge *does not* apply to parking violations issued by Police Department personnel and adjudicated by the

Department of Finance, since those violations are written not under the authority of the VTL but under the NYC Traffic Rules.

## **USE OF MOBILE PHONES AND PORTABLE ELECTRONIC DEVICES CHAPTER 58, PART C**

Chapter 58, Part C amends several sections of the Vehicle and Traffic Law (VTL) regarding the use of cell phones and portable electronic devices while driving. First, a general change is enacted to VTL Section 1225-d(2)(a), regarding the definition of *portable electronic device*. The term is broadened to include any electronic device when used to *input, write, send, receive, or read text for present or future communication*. Section 1225-d(2)(b) is amended to expand the ways in which a driver is deemed to be using the device; using the device will now also include holding the device *for the purpose of present or future communication, performing a command or request to access a world wide web page*, as well as performing activities associated with instant messaging.

The law additionally focuses on the specific use of cell phones and electronic devices while operating a commercial motor vehicle. VTL Section 1225-c is amended to go beyond the general definition of using a cell phone, i.e., holding it to one's ear, by separately providing that for drivers of commercial vehicles, *using it includes dialing or answering it by pressing more than a single button, or reaching for a cell phone in a manner that requires the driver to no longer be seated and restrained by a seat belt*. Further, for drivers of commercial vehicles, use of a hands-free mobile telephone which would otherwise be lawful is *prohibited if it is dialed or answered by pressing more than a single button*. The law amends VTL Section 1225-c(a) and (b) to impose new restrictions on such commercial drivers, prohibiting their engaging in a call (and presuming that they are engaging in a call if holding the cell phone to their ear) not only while the vehicle is in motion, but also *while the vehicle is temporarily stopped due to traffic, a traffic control device, or other momentary delays*. However, the operator is allowed to engage in a call when lawfully stopped at the side of, or off, a public highway.

The law also amends VTL Section 1225-d to place similar new restrictions on commercial drivers regarding the use of portable electronic devices. They are prohibited from using the device while the vehicle is temporarily stopped, but allowed to use the device when lawfully stopped at the side of, or off, a public highway. The presumption that the operator is using the device while holding it in a conspicuous manner is also amended to be consistent. For both cell phones and electronic devices, the already-existing exceptions for emergency use and for use by emergency personnel remain unchanged.

The law adds a new paragraph d to Section 1225-c(2), prohibiting a motor carrier from allowing or requiring its drivers to use a hand-held cell phone while operating a commercial vehicle. The law adds the same prohibition to Section 1225-d, as new subdivision 1-a, prohibiting carriers from requiring their operators to use portable electronic devices.

Finally, VTL Section 510-a(4)(a) is amended to define a "serious traffic violation" to include *operating a commercial vehicle while using a cell phone or portable electronic device*, for purposes of mandatory suspension of a commercial driver's license for multiple violations.

## **SUSPENSION OF PROBATIONARY OR JUNIOR LICENSES**

### **CHAPTER 91**

Chapter 91 amends Vehicle and Traffic Law (VTL) Section 510-b(1), "Suspension and Revocation for Violations Committed during Probationary Periods," to include a first violation of VTL Section 1225-c, "Use of Mobile Telephones" or VTL Section 1225-d, "Use of Portable Electronic Devices," among the list of infractions for which the holder of a probationary license will have his or her license suspended for 60 days. Upon a second conviction within 60 days of having the license restored after suspension, the penalty becomes a 6-month revocation of the license.

Chapter 91 also amends VTL Section 510-c(2), "Suspension and Revocation of Learner's Permits and Driver's Licenses for Violations Committed by Holders of Class DJ or Class MJ Learner's Permits or Licenses," to include violations of VTL Sections 1225-c or 1225-d, among the list of "serious traffic violations," subjecting the holder to a 60-day license suspension for a first conviction. For a second conviction within 60 days of having the license restored after suspension, the penalty becomes a 60-day revocation of the license.

Chapter 91 supplements an administrative change to DMV regulations ordered by Governor Cuomo applying to all drivers, *increasing from three to five* the number of driver violation points they will be assessed for violating VTL prohibitions against using a cellphone or portable electronic device while operating a motor vehicle.

## **IGNITION INTERLOCK DEVICES – "LEANDRA'S LAW"**

### **CHAPTER 169**

Chapter 169 amends Vehicle and Traffic Law (VTL) Section 511(3)(a), "Aggravated Unlicensed Operation of Motor Vehicle in the 1<sup>st</sup> degree," by adding a new subparagraph iv *to make it a class E felony for a driver holding a conditional license to operate a vehicle while intoxicated or impaired by alcohol or drugs*. The new law further amends VTL Section 1193(1)(b) and (c) which relate to penalties for intoxicated and impaired driving, to explicitly include youthful offenders among the defendants who are subject to mandatory ignition interlock requirements. The law also increases from six months to twelve months the minimum period of interlock installation as part of the sentence upon conviction, but provides that a twelve-month period will be terminated upon proof that the defendant installed and maintained an interlock device for at least six months.

Finally, Chapter 169 amends VTL Section 1198(4)(a) to allow a court to waive the installation of an ignition interlock device when a person under oath attests that he or she is not the owner of a motor vehicle and will not operate any vehicle during the period of the interlock restriction, except as otherwise authorized by law.

## **SPEED CAMERAS**

### **CHAPTER 189**

Chapter 189 adds a new Section 1180-b to the Vehicle and Traffic Law, modeled on the already existing red light camera program, to establish a demonstration program utilizing "photo speed violation monitoring systems," or speed cameras, in up to 20 school speed zones in the City. The law expires on August 31, 2018 and imposes specific limits on where and when speed

cameras may be used to record violations, including requiring appropriate signage as well as operation only on school days during times related to school hours or student activities.

The law sets forth minimum standards to ensure that the camera systems are calibrated and operated properly, and requires that the technology ensure, to the extent practicable, that the images it produces do not identify vehicle occupants and contents. The law strictly limits the use of the images to adjudication of the violations they document, and the images must be destroyed at the conclusion of the adjudication process or one year after a notice of liability is issued, whichever is later. The images are not to be made available to any person or entity outside of the context of the adjudication except the vehicle owner or operator, but may be provided in response to a search warrant or court-ordered subpoena where a court finds that the material is relevant and material to the prosecution or investigation of a crime.

The penalty for a speed camera violation is set by the Department of Finance (Parking Violations Bureau), and may not exceed \$50, plus another \$25 for failure to timely respond to the notice of violation. The law provides that the violation is established if the system documents a vehicle traveling more than 10 mph over the posted speed limit within a school speed zone, and the vehicle was operated with the permission of the owner, express or implied.

## **HELMET REQUIREMENTS FOR HORSE RIDING CHAPTER 246**

Chapter 246 amends Vehicle and Traffic Law (VTL) Section 1265, which requires children under 14 to wear helmets while riding horses on a public road, or on a private road open to vehicle traffic. Chapter 246 raises the age requirement from anyone under 14 *to anyone under 18*. Chapter 246 also increases the maximum civil penalty for violating the section, from \$50 to \$250. The law leaves unchanged the provision that no summons may be issued to the minor, but instead may only be issued to a parent or guardian, and only if the parent or guardian is at least 18 and was present when the violation occurred. Chapter 246 also makes conforming changes to General Business Law Section 396-dd, "Renting of Horses; Helmets and Safety Information," to require those renting out horses for training or riding to provide helmets at no extra cost to riders under 18, with a penalty of up to \$250 for a knowing violation.

## **PROHIBITION OF U-TURNS WITHIN SCHOOL ZONES CHAPTER 249**

Chapter 249 amends Vehicle and Traffic Law Section 1161, "U Turns in Certain Areas Prohibited," adding a new subdivision b, prohibiting any motor vehicle from making a U-turn within a school zone. The new law defines a "school zone" as *the distance along a road passing a school building, entrance or exit of a school abutting on the road for which an authorized school sign has been posted*.

## **DISMISSAL OF VEHICLE EQUIPMENT VIOLATIONS CHAPTER 302**

Chapter 302 amends Vehicle and Traffic Law (VTL) Section 376-a(4), providing for dismissal of most vehicle equipment violations defined in VTL Sections 375, 376, and 381, if the violation is corrected by the evening of the next full business day. Chapter 302 adds Saturday to the list of days (Sundays and certain holidays) that are not counted against the motorist as a

“business day,” intended to give those who observe the Sabbath an equal opportunity to correct the violation and obtain dismissal of the summons.

## **WORKERS’ COMPENSATION LAW**

### **WORLD TRADE CENTER RELATED INJURY OR ILLNESS CHAPTER 489**

Chapter 489 is intended to address gaps in the Workers’ Compensation Law and the various retirement laws affecting public servants who were injured or became ill as a consequence of their participation in the September 11<sup>th</sup> rescue, recovery or cleanup effort. The law is deemed retroactive to September 11, 2001.

With respect to retirement issues, Chapter 489 amends Administrative Code Sections 13-168 and 13-252.1 respectively, to extend to members of Tiers I and II of NYCERS and the Police Pension Fund who filed for vested retirement benefits, the same entitlements granted to the other members of both retirement systems. A corresponding amendment to Retirement and Social Security Law extends the deadline for filing a written and sworn statement of participation for these vested members, or their eligible beneficiaries, until September 11, 2014 (which was subsequently extended to September 11, 2015 by Chapter 472 of the Laws of 2014).

With respect to Workers’ Compensation Law coverage, Chapter 489 amends Workers’ Compensation Law Section 161(3) to redefine a “qualifying condition,” for purposes of workers’ compensation benefits, to list the diseases or conditions rather than using an ambiguous phrase, “latent disease or condition.” The list now mirrors the language contained in the Retirement and Social Security Law, defining “qualifying World Trade Center conditions” for purposes of disability retirement. Chapter 489 also extends the time for filing a registration statement with the Workers’ Compensation Board to September 11, 2014, extends the time for filing a claim for a WTC-related disablement that occurred between September 12, 2008 and September 11, 2012 to September 11, 2014, and allows formerly time-barred claims to be reopened.

## **LOCAL LAWS**

### **STOOP LINE STAND RESTRICTIONS LOCAL LAWS 5, 8**

Local Laws 5 and 8 amend several sections of the Administrative Code applicable to “stoop line stands” operated by stores in front of their building facades. In general, such stands must be licensed by either the Department of Consumer Affairs or the Department of Small Business Services, must fall within size restrictions provided in the law, and may only be used by the business to sell certain items. Payment for goods sold from the stand must take place inside the premises rather than on the sidewalk.

First, the new laws remove cigars, cigarettes and tobacco from the list of items contained in Administrative Code Section 20-233(b) which are allowed to be displayed on these stands. Therefore, *the only items allowed to be displayed in this manner are fruits, vegetables, soft drinks, confectionery, ice cream and flowers.*



Second, Administrative Code Section 20-237 sets forth the general size restrictions for stoop line stands, i.e., they must not extend more than 3 feet from the front of the premises; they must not be more than 7 feet in height; they must be maintained wholly within the stoop line; they must not obstruct the sidewalk; and they must not be more than 10 feet long or 4 feet wide. However, where the sidewalk is at least 16 feet wide, the stoop line stand may extend up to 10 feet long and 5 feet wide as long as there is an unobstructed sidewalk path at least 9-1/2 feet wide.

The new laws eliminate the requirement that the stoop line stand not extend more than 3 feet from the front of the premises. They amend Section 20-237 to now provide that if the sidewalk is at least 21 feet wide and located within an M1, M2 or M3 (manufacturing) zoning district, and the stand was licensed on or before September 1, 2012, the stand may extend up to 10 feet long and 10 feet wide as long as there is an unobstructed sidewalk path at least 9-1/2 feet wide. Violations of the size restrictions are treated as unlicensed general vending or food vending, depending on the items displayed. Other violations, including sale of items not permitted by the statute, are punishable as violation-level offenses. Failure to obtain the required license is a violation-level offense for a first violation; the penalty is a misdemeanor for a second violation or a violation by someone who previously held a license that lapsed, or was revoked or suspended.

Note that these “stoop line stands” are not to be confused with “sidewalk obstructions” governed by a different Administrative Code provision, Section 19-136, which generally prohibits placing goods more than 3 feet away from the front of buildings, limits the type of goods which may be sold from these obstructions, and prohibits the obstructions altogether on certain streets.

## **EMPLOYMENT DISCRIMINATION – UNEMPLOYMENT, PREGNANCY LOCAL LAWS 14, 76**

Local Law 14 amends Administrative Code Section 8-107, to add a new subdivision 21, which prohibits employers from basing an employment decision regarding the “hiring, compensation, or the terms, conditions, or privileges” of employment on the applicant’s unemployment status. “Unemployment” is defined in Section 8-102, as *not having a job, being available for work, and seeking employment*. Employers are also precluded from publishing any advertisement for a job vacancy that contains any indication that current employment is a job requirement, or any statement that unemployed applicants will not be considered for the vacancy.

Local Law 78 amends Administrative Code Section 8-107, to add a new subdivision 22, which makes it an unlawful discriminatory practice for an employer to *refuse to provide a reasonable accommodation to an employee based on her pregnancy, childbirth, or related medical condition*, provided that the condition is known, or should have been known, by the employer. The law provides an affirmative defense to an employer if the employee could not, with reasonable accommodation, satisfy the essential requisites of the job.

*See Interim Orders 13 and 18, series 2013.*

## **FOOD VENDING AND TAXI STANDS LOCAL LAW 17**

Local Law 17 amends Administrative Code Section 17-315(b) and (e) to *prohibit any vending vehicle, pushcart, or other related items used for food vending to temporarily or permanently touch, lean against, or be affixed to any taxi stand*. The new law also *prohibits any food vending within any taxi stand*. Note that general vending is already prohibited within taxi stands by Administrative Code Section 20-465(e).

## **VENDING NEAR RESIDENTIAL BUILDINGS LOCAL LAW 18**

Local Law 18 amends Administrative Code Sections 17-315(d) and 20-465(d) to prohibit the presence of food and general vending pushcarts, stands or goods, *within 20 feet from exits, including service exits, to buildings that are exclusively residential at the street level*. Note that the law repealed a related provision prohibiting general vending within 10 feet of such locations.

## **VENDING NEAR HOSPITALS LOCAL LAW 19**

Local Law 19 amends Administrative Code Sections 17-315(e) and 20-465(e) to *prohibit food and general vendors from vending within the portion of the sidewalk abutting a no standing zone adjacent to any hospital*. “Hospital” is defined broadly in terms of Public Health Law Section 2801, to include among other facilities general hospitals, treatment centers, rehabilitation centers, dental clinics and nursing homes.

## **FOOD VENDOR NOTICE OF VIOLATION LOCAL LAW 20**

Local Law 20 amends Administrative Code Section 17-321(e) to require that any notice of violation issued to a food vendor that is returnable to the Environmental Control Board must state the permit number of the vehicle or pushcart associated with the notice of violation.

*See Operations Order 26, series 2014.*

## **LIMITATION ON HONORING IMMIGRATION DETAINERS LOCAL LAW 21; LOCAL LAW 59 OF 2014**

Local Law 21 created new Administrative Code Section 14-154, which prohibited the NYPD from honoring a civil immigration detainer forwarded to the Department by Immigration and Customs Enforcement (ICE), either by holding a person beyond the time when the person would ordinarily have been released or by notifying federal immigration authorities of the person’s release, unless the person fell within a certain set of enumerated criteria. The criteria allowed for the honoring of a detainer depending upon the pending charges bringing the person within Department custody, or the prior criminal history of the person.

However, in 2014 the criteria were significantly narrowed by Local Law 59 of 2014, which amends Administrative Code Section 14-154 to prohibit the NYPD from honoring ICE detainees, unless the detainer is accompanied by a “judicial warrant,” defined as an arrest warrant

based on probable cause, issued by a federal District Court judge or federal magistrate (but not including a federal immigration judge). Further, even when accompanied by a judicial warrant, the detainer must not be honored unless the subject of the warrant is either identified as a possible match in a terrorist screening database, or has been convicted of a “violent or serious” crime as defined in the bill, within the prior five years. The law contains a list of the felonies which constitute “violent or serious” crimes.

Local Law 59 contains a special provision which allows the NYPD to honor a detainer and hold a person up to 48 hours excluding weekends and holidays, without an accompanying judicial warrant, if the subject of the detainer is identified as a possible match in a terrorist screening database, or was convicted of a violent or serious crime and illegally re-entered the country after a previous removal or return (which would generally be indicated on the detainer form itself). This NYPD exception is intended to give ICE an opportunity to provide a supporting judicial warrant within the 48-hour period. If a judicial warrant is ultimately not provided, or the subject of the detainer otherwise does not fit the criteria provided in the new law, the NYPD must release the individual from custody when they would normally have been released, and is prohibited from notifying ICE of the subject’s release.

### **ENHANCED PENALTIES FOR DISASTER-RELATED CRIMES LOCAL LAW 30**

Local Law 30 enacts a new Administrative Code Section 10-171, entitled “Prohibited Acts During a Local State of Emergency.” Section 10-171(b) makes it unlawful to commit one of several enumerated acts during a local state of emergency, either (1) in a mandatory evacuation zone during a mandatory evacuation period, or (2) when the act occurs during reduction or loss of essential services as a result of the emergency. The enumerated acts are:

- *to intentionally or recklessly cause, or create a material risk of, physical injury to a person;*
- *to intentionally or recklessly damage, create material risk of damage to, or wrongfully deprive another person of property;*
- *to knowingly enter or remain unlawfully in a building or upon real property of another person;*
- *to intentionally or recklessly impede, or cause a material risk of impeding, response to the circumstances of the emergency by any governmental agency, officer or employee; or*
- *to impersonate another with the intent to obtain a benefit, or to injure or defraud a person; this particular act is unlawful even if it occurs after a local state of emergency, if the conduct is related to the circumstances of the emergency.*

Violation of Section 10-171(b) is a misdemeanor punishable by imprisonment for up to 6 months and a fine of up to \$2,500, and/or a civil penalty between \$1,000 and \$5,000. However, if the person harmed or the property affected is located in a mandatory evacuation zone and the violation occurs during a mandatory evacuation period, then the penalties are higher: the misdemeanor is punishable by imprisonment for up to one year with a fine of up to \$5,000, and the civil penalty is between \$5,000 and \$10,000. Civil penalties are to be recovered through a civil action initiated by the City Law Department. The law provides an affirmative defense where the defendant’s conduct constituted reasonable action taken as a result of or in response to the emergency, but it is no defense that property entered, damaged or taken was previously

damaged in connection with the emergency.

## **REDUCTION OF PENALTIES FOR MULTIPLE VENDING VIOLATIONS LOCAL LAW 38**

Local Law 38 amends Administrative Code Sections 17-325, setting forth penalties applicable to food vendors, and 20-472, setting forth penalties applicable to general vendors. The new law requires that any enhanced criminal fine or civil penalty for multiple violations be imposed only if the second or subsequent violation is for the same offense as the underlying offense, rather than for any other violation of vending prohibitions. The law also reduces the penalty for a fourth or subsequent violation within a period of two years, from a range of \$250 to \$1,000, to a maximum of \$500 with no minimum. Note that the new law does not affect the penalties for unlicensed vending, which are treated separately in the Administrative Code.

## **MOTORIZED SCOOTERS LOCAL LAW 40**

Local Law 40 amends the definition of “motorized scooter” contained in Administrative Code Section 19-176.2(a) to eliminate a loophole which made the Administrative Code prohibitions against operating or selling such a vehicle virtually unenforceable. The law removes exceptions for vehicles that are not capable of exceeding 15 mph or are Segways. Now, “motorized scooters” will be defined more simply as *any wheeled device that has handlebars that is designed to be stood or sat upon by the operator, is powered by an electric motor or by a gasoline motor that is capable of propelling the device without human power and is not capable of being registered with the NYS Department of Motor Vehicles*. (The law retains an exception for wheelchairs or other mobility aids designed for use by disabled persons.)

Note that Administrative Code section 19-176.2(b) prohibits operation of motorized scooters in New York City, punishable as a traffic infraction but also by a civil penalty of \$500, enforceable by a civil action or by notice of violation returnable to the Environmental Control Board. Section 19-176.2(d) provides that the scooter may be seized and impounded until any fines, civil penalties, removal charges and storage fees have been paid or a bond posted.

In addition, Administrative Code section 20-762(b) prohibits anyone from selling, leasing or renting a motorized scooter to another person in New York City, or attempting to do so. Violation of this prohibition is punishable as a traffic infraction but also by a civil penalty of \$1,000 for a first violation, and \$2,000 for each subsequent violation within a year. Each sale, lease or rental, or attempt to do so, is deemed a separate violation, and the civil penalty is enforceable by a civil action or by a notice of hearing returnable to the Department of Consumer Affairs Administrative Tribunal. Section 20-762(d) provides that the scooter may be seized and impounded until any fines, removal charges and storage fees have been paid or a bond posted.

## **MOTORIZED COMMERCIAL BICYCLES LOCAL LAW 41**

Local Law 41 amends Administrative Code Section 10-157, regulating entities using bicycles for commercial purposes, by adding a new subdivision k, making it illegal for a business to possess a motorized scooter. Note that Section 10-157(b) requires such businesses to equip their bicycles with a 3" by 5" sign carrying the name of the business and a unique bicycle ID

number, which would assist in demonstrating possession under the new law. Subdivision k also *prohibits the business from permitting any employee to operate a motorized scooter on behalf of the business, and makes the business liable for any penalty incurred by an employee illegally operating the scooter on behalf of the business.*

Violation of this new provision, like the rest of the law applying to businesses using bicycles for commercial purposes, is a criminal offense, punishable by imprisonment for up to 15 days and/or a fine between \$100 and \$250. In addition to the criminal penalty, a first violation is punishable by a \$100 civil penalty, with an additional \$250 civil penalty for a second violation for the same conduct committed more than 30 days after a first violation. The civil penalties may be enforced by a civil action or by a notice of violation returnable to the Environmental Control Board.

### **GAMBLING AT AMUSEMENT ARCADES AND GAMING CAFÉS LOCAL LAW 45**

Local Law 45 is intended to address unlawful gambling activity conducted at amusement arcades and gaming cafés. Administrative Code Section 20-214(c)(3) prohibits an amusement arcade or gaming café from offering money prizes or awards, or prizes or awards that are redeemable in money, credit or allowances. The new law provides that the Department of Consumer Affairs (DCA) must revoke the license of an amusement arcade or gaming café, after notice and hearing: 1) if DCA finds that the owner, operator or an employee has permitted the prohibited offering or distribution of prizes or awards; or 2) where the owner, operator or employee has been convicted of any violation of Penal Law 225 (Gambling Offenses), or of a lesser offense in satisfaction of an Article 225 criminal charge, for conduct occurring on the premises.

*See Operations Order 40, series 2013.*

### **STREET CO-NAMINGS HONORING DECEASED MEMBERS OF THE SERVICE LOCAL LAWS 50, 131, 154**

Local Laws 50, 131 and 154 designate honorary names for public thoroughfares in recognition of several individuals, including fallen members of the service:

- Captain Dennis Morales – “Captain Dennis Morales Way” is located at the intersection of 4<sup>th</sup> Avenue and 36<sup>th</sup> Street in Brooklyn.
- Police Officer Glen Pettit – “Officer Glen Pettit Corner” is located on 20<sup>th</sup> Street between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues in Manhattan.
- Cadet Salman Hamdani – “Salman Hamdani Way EMT, NYPD Cadet 9-11-01” is located at 204<sup>th</sup> Street between 35<sup>th</sup> and 34<sup>th</sup> Avenues in Queens.

One additional deceased member is also honored:

- Assistant Chief Arthur Hill – “Arthur Hill Way” is located at the intersection of Illion Avenue and Hannibal Street in Queens.

The honorary street names contained in the law do not affect the actual names of these streets on the official map of New York City.

### **THEFT OF MANHOLE COVERS LOCAL LAW 55**

Local Law 55 adds new Section 10-118.1 to the Administrative Code, making it a misdemeanor for an unauthorized person to *remove, or transport through, along or across a public street, any manhole cover*. The term “manhole cover” *includes the cover of an opening in the ground, street or sidewalk used by a public utility or authority to access underground structures, as well as a cover which is part of a sewer system, fuel storage system, or water supply system*. The violation is punishable by imprisonment for up to 30 days and/or a fine between \$500 and \$10,000. In addition, an offender is liable for a civil penalty between \$2,500 and \$10,000, adjudicated through a notice of violation returnable to the Environmental Control Board.

The law also amends parallel sections of the Administrative Code applicable specifically to manhole covers in the City’s water supply system and sewer system, to provide the same penalties for removal of manhole covers in violation of Administrative Code Sections 24-304 (water supply) and 24-517 (sewer system). Although these specific prohibitions already existed in the Administrative Code, the enactment of new Section 10-118.1 is intended to ensure that the ability to charge these types of thefts does not depend on the type of manhole cover stolen.

### **NYPD INSPECTOR GENERAL (COMMUNITY SAFETY ACT) LOCAL LAW 70**

Local Law 70 amends City Charter Sections 803 and 804 to direct the Commissioner of the Department of Investigation (DOI), on an ongoing basis, *to investigate, review, study, audit and make recommendations regarding the operations, policies, programs and practices of the New York City Police Department, including ongoing partnerships with other law enforcement agencies*. New Section 803(d) requires the Commissioner of Investigation to forward reports regarding studies of the NYPD’s operations, policies, programs and practices, to the Mayor, the City Council and the Police Commissioner, upon completion, and the Police Commissioner is required to provide a written response to the Mayor, Council and DOI within 90 days.

Beginning on April 1, 2015, in addition to reports of individual matters, the DOI is required to prepare an annual summary report detailing its activities with respect to NYPD matters, including descriptions of all significant findings; recommendations for corrective action made; instances of prior recommendations which have not been implemented or completed; and number of open investigations or studies. All reports generated by DOI are required to be posted on its website within 10 days of issuance.

The law also amends Section 803(c) to provide whistleblower protection for those making a complaint to, disclosing information to, or responding to queries from, DOI, and requires DOI to place a link on its website for reporting problems and deficiencies regarding the NYPD, which may be filed anonymously.

## BIAS-BASED PROFILING (COMMUNITY SAFETY ACT) LOCAL LAW 71

Local Law 71 amends Administrative Code Section 14-151, which already prohibited “racial or ethnic profiling,” defined in a manner which was consistent with Department policy. Local Law 71 renames the section “bias-based” profiling, and essentially leaves the definition unchanged, that is, using a demographic characteristic as the determinative factor in taking police action, rather than behavior or other information that links a person to suspected unlawful activity. The law also amends Administrative Code Section 14-151(b) to prohibit not only individual police officers from engaging in bias-based profiling, but also to prohibit the NYPD, as a whole, from doing so.

The law expands the definition to prohibit profiling based on an individual’s *actual or perceived race, national origin, color, creed, age, alienage or citizenship status, gender, sexual orientation, disability or housing status*. “Housing status” refers to *the character of an individual’s residence or lack thereof*, with examples given such as *use of publicly assisted housing, use of the shelter system, or actual or perceived homelessness*.

The law also adds subdivisions (c) and (d) to Section 14-151 which create a private right of action for anyone claiming to be the victim of bias-based profiling, which may be asserted either in court or before the New York City Commission on Human Rights. Successful plaintiffs may not collect damages, but may obtain injunctive or declaratory relief, along with attorneys’ fees and experts’ fees. With respect to individual officers, *the claim is sustained if the officer has intentionally engaged in bias-based profiling, and the officer fails to prove that the law enforcement action at issue was justified by a factor unrelated to unlawful discrimination*. With respect to a governmental body, *the claim is sustained if the body has intentionally engaged in bias-based profiling, and the body fails to prove that the bias-based profiling was necessary to achieve a compelling government interest and was narrowly tailored to achieve that compelling interest*.

With respect to the NYPD specifically, the law makes available to plaintiffs an additional alternative. The claim of bias-based profiling is established *if an NYPD policy or practice regarding initiation of law enforcement action has had a disparate impact on one of the protected categories, and the Department fails to prove, as an affirmative defense that the policy or practice bears a significant relationship to advancing a significant law enforcement objective or does not contribute to the disparate impact*. The plaintiff is not required to prove which one, among several policies or practices, results in the alleged disparate impact, and notwithstanding the Department’s affirmative defense, the plaintiff can prevail by producing substantial evidence that an alternative policy or practice with less disparate impact is available, with the Department failing to prove that such alternative policy or practice would not serve the law enforcement objective as well. However, the mere existence of a statistical imbalance between the demographic category of the plaintiff and the general population is not enough to establish a prima facie case of disparate impact, unless: the general population is shown to be the relevant pool for comparison; the imbalance is statistically significant; and there is an identifiable policy or practice that allegedly causes the imbalance.

## **STATEN ISLAND FERRY SERVICE LOCAL LAW 88**

Local Law 88 amends Administrative Code Section 19-305 to ultimately require Staten Island Ferry service every half hour 24 hours a day, seven days a week. The law *mandates that on Saturdays, except legal holidays, service both to and from the Whitehall and St. George terminals must be every 30 minutes, except between 0200 and 0600 hours, when service must be hourly.* Similarly, on Sundays, except legal holidays, *service must be every 30 minutes except between 0200 and 0900 hours, when service must be hourly.*

However, the law builds in an exception if the DOT determines that staffing levels will not permit increased weekend service. In that case increased service will be delayed until the DOT certifies that staffing is adequate, but in any event the revised weekend schedule must be put in place by May 9, 2015. Additionally, the new law requires that by May 1, 2015, service both to and from the Whitehall and St. George terminals must be every 30 minutes at all times (including legal holidays) except when the law requires it to be more frequent. However, the law also builds in an exception to this requirement. If the DOT, in consultation with the Office of the Mayor, determines that full expansion of ferry service is not economically feasible, it must report the reasons by April 1, 2015, along with a plan for future expansion. Follow up reports will be required every two years, including description of any expansion of service implemented.

## **SALE OF TOBACCO PRODUCTS TO PERSONS UNDER 21 LOCAL LAW 94**

Local Law 94 amends Administrative Code Section 17-706 to prohibit anyone operating a place of business where cigarettes, tobacco products, or electronic cigarettes are sold or offered for sale from selling such products to anyone under the age of 21 (increased from the prior minimum age of 18). Electronic cigarettes are defined as *battery operated devices that contain nicotine and deliver vapor for inhalation, and include any refill, cartridge or other component.* Businesses may only sell these products to someone *who demonstrates, through a driver's license or other photo identification card issued by a government entity or educational institution, that the buyer is at least 21.* Identification need not be required of anyone who reasonably appears to be at least 30, but appearance does not constitute a defense to a charge of underage sale.

The law also adds new subdivision b to section 17-706 prohibiting a business from selling non-tobacco shisha, pipes or rolling papers to anyone under 18, and photo identification is required unless the buyer reasonably appears to be at least 25 years of age, although appearance does not confer a defense in this case either.

Violation of the prohibitions contained in Administrative Code Section 17-706 are punishable by civil penalties primarily enforced by the Department of Health and Mental Hygiene, Department of Consumer Affairs, and Department of Finance.

## **CIGARETTE TAX EVASION LOCAL LAW 97**

Local Law 97 amends several sections of the Administrative Code to increase penalties for cigarette tax evasion, including the sealing of premises and seizure of products where the



violation occurred. It also bans the use of coupons or discounts for tobacco products, establishes a minimum price for cigarettes and little cigars, requires cigars to be sold in packages of at least four except for cigars costing more than \$3 each, requires little cigars to be sold in packages of at least 20, and requires signage notifying customers that cigarettes must be sold in packages bearing valid tax stamps.

Except for penalties related to cigarette tax evasion, violations of the Administrative Code's restrictions and signage requirements pertaining to the sale of cigarettes and tobacco products are punishable by civil penalties enforced by the Department of Health and Mental Hygiene, the Department of Consumer Affairs (DCA), and the Department of Finance (DOF), including possible revocation of the business' license to sell cigarettes. Of particular interest to the Department, however, Local Law 97 also substantially increases the penalties available to address cigarette tax evasion, which is enforced by the Police Department as well as the DOF.

Specifically, Administrative Code Section 11-1301(7) is amended to *reduce from 5,000 to 400 the number of cigarettes, possessed or transported at any one time, which will constitute presumptive evidence that the possessor is a retail dealer, subject to City cigarette tax provisions.* The law adds a new subdivision d to Section 11-1304 *prohibiting anyone from selling, offering for sale, possessing or transporting any affixed or unaffixed false, altered or counterfeit tax stamps, imprints or impressions.* An exception is made for anyone who is not a retail dealer, in possession of 20 or fewer affixed tax stamps. In addition to any civil penalties imposed by the DOF, violation of this prohibition is a misdemeanor. (Note that it is a class E felony under both local and State law to actually counterfeit or alter cigarette tax stamps.)

Also, the law adds new Administrative Code Section 11-4023, which authorizes DOF to seal the premises of those retailers who violate the law multiple times over three year period, and new section 11-4024, which authorizes police officers and DOF peace officers to seize cigarettes from unlicensed wholesale or retail dealers, and flavored tobacco products from anyone selling them other than in a tobacco bar, with the property thereafter forfeited to the City.

Finally, with respect to the licensing of retail dealers in cigarettes, Administrative Code Section 20-201(f) is amended to *reduce from 5,000 to 400 the number of cigarettes, possessed or transported at any one time, which will constitute presumptive evidence that the possessor is a retail dealer,* and therefore required to be licensed by DCA as a retail dealer. Unlicensed activity subjects the offender to both criminal and civil penalties, as well as sealing of the premises by the DCA for multiple violations.

### **STREET RE-NAMING IN HONOR OF TUSKEGEE AIRMEN LOCAL LAW 106**

Local Law 106 renames a street in Queens after the Tuskegee Airmen. Contrary to the City Council's usual practice of giving streets honorary names without changing the actual street name, *the new law amends the official map of the City of New York.* Therefore, *South Road between Merrick Boulevard and Remington Street in Queens is officially renamed "Tuskegee Airmen Way."*

## **RIGHT TURNS FROM BUS LANES LOCAL LAW 113**

Local Law 113 enacts new Administrative Code Section 19-175.4, "Right Turns from Bus Lanes," which essentially codifies NYC Traffic Rule Section 4-12(m). The Traffic Rule permits traveling in a bus lane to make the first available right hand turn "into a street, private road, private drive, or an entrance to private property . . . ." The new law permits vehicles to drive in a bus lane if the vehicle enters the lane and *makes the next permissible right turn onto a mapped street*. The law is intended to address claims that the introduction of bus lane cameras has inadvertently resulted in summonses being inappropriately issued, when vehicles in bus lanes have failed to make the next right turn, because the next turn would actually be into a driveway rather than into a street.

## **POSTING MATERIAL ON CITY-OWNED PROPERTY LOCAL LAW 128**

Local Law 128 amends Administrative Code Section 10-119, which prohibits the posting or affixing of handbills, posters or other printed material on City-owned property, to explicitly include *City-owned grassy areas adjacent to a street* among the locations where such activity is prohibited. Violations are criminal offenses punishable by up to ten days' imprisonment and/or a fine between \$75 and \$150, plus the cost of removal, and may also subject the offender to civil penalties.

## **COMMUTER VANS LOCAL LAW 136**

Local Law 136 adds new subdivision l to Administrative Code Section 19-504.2, which requires the Taxi and Limousine Commission (TLC) to post, on its website, links to all City laws and rules governing the operation of commuter vans. The TLC will also be required to post, within three days of issuing an authorization to operate a commuter van service, the geographic area in which the service is authorized to operate, and the number of vans authorized to be used. Note that the TLC has created a webpage reflecting the subject van services and areas, located at: <http://www.nyc.gov/html/tlc/html/industry/vans.shtml>.

## **RECORDKEEPING FOR PAWNBROKERS AND SECOND-HAND DEALERS LOCAL LAW 149**

Local Law 149 amends Administrative Code Sections 20-267 and 20-273, regarding second-hand dealers, and Section 20-277, regarding pawnbrokers, in several ways.

First, regarding second-hand dealers, the basic requirement to maintain written records is left essentially unchanged. However, the law imposes a new and additional requirement on second-hand dealers *dealing in certain types of property: precious metals; electrical appliances (excluding kitchen appliances); and electronic equipment, computers, or their component parts*. Dealers will now have to create electronic records of transactions involving these types of property, in a manner which the Police Commissioner will specify by rule. The electronic record will have to include the following information for each transaction: date, time and location of transaction; accurate description of each article including identifying numbers or distinguishing marks; and one or more digital photographs of the article as specified by the Police

Commissioner.

A separate set of written recordkeeping requirements exists in current law for second-hand dealers who deal in purchase or sale of pawn tickets, or the redemption or sale of pawned articles. The law adds a new set of electronic recordkeeping requirements for these dealers as well: name and address of the person who issued the pawn ticket; the pawn ticket's pledge number; the amount loaned; the date and time of the transaction; the amount paid or received; and a description of the article involved in the transaction. The new law also allows the Police Commissioner to require digital photographs of the subject articles.

Separate and apart from electronic recordkeeping, the new law requires second-hand dealers dealing in used motor vehicles to add some information to the written records they already keep, namely, the VIN for any motor vehicle or motor sold or otherwise disposed of, as well as the date of birth of the person removing the property, their driver's license (if they have one) with the state of issuance, and the destination to which the vehicle or motor is being removed.

For pawnbrokers, Administrative Code Section 20-277 currently authorizes the Police Commissioner to require written records of each transaction, and this requirement is satisfied by preparation of forms contained in the NYPD-issued Second-Hand Article Store Log, also used by second-hand dealers. The law amends current law regarding the information which pawnbrokers may be required to include in the Log, to more specifically identify the pledgors or redeemers of pawned property, including name, address, phone number, date of birth, sex, and race or ethnicity. The law also adds a new requirement that all pawnbrokers create electronic transaction records, to include: the date, time and location of transaction; a description of each article pawned including identifying numbers or distinguishing marks; a similar description of each article redeemed; and digital photographs as required by the Police Commissioner.

For any business required to create electronic records, the Police Commissioner may designate an internet website through which they will be shared. The electronic records must be kept for at least six years, and each business must acquire and maintain the equipment necessary to comply with the requirement, to include at a minimum a computer with internet connection and a digital camera.

***UPDATED NOTE: As of August, 2015, in light of litigation challenging the validity of Local Law 149, the City has voluntarily agreed to refrain from implementing the provisions requiring electronic recordkeeping. Therefore enforcement of the prior law remains in effect. See Patrol Guide Section 214-38.***

## **ELECTRONIC CIGARETTES LOCAL LAW 152**

Local Law 152 amends several sections of the Administrative Code to prohibit the use of electronic cigarettes in public places and places of employment, essentially treating electronic cigarettes in the same manner as traditional cigarettes, for purposes of the City's Smoke-Free Air Act.

The law amends Section 17-502 to define "electronic cigarette," as an *electronic device that delivers vapor for inhalation, including any refills, cartridges, or any other component of an*

*electronic cigarette, but not including any product approved by the FDA as a drug or medical device. In addition, a “retail electronic cigarette store” is defined as a retail store devoted primarily to selling electronic cigarettes, where the sale of other products is merely incidental, generating less than 50% of the store’s total annual gross sales.*

The law amends Section 17-503 regulating smoking in public places, and Section 17-504, regulating smoking in places of employment, to prohibit using electronic cigarettes anywhere that smoking is prohibited. Employers are required to make any changes necessary to the written smoking policies they are already required to post and to distribute to employees, so that they include the new restrictions on using electronic cigarettes as well.

The law also amends Section 17-505, listing the areas where the Smoke-Free Air Act does not prohibit smoking, to permit the use of electronic cigarettes anywhere smoking is permitted, as well as in retail electronic cigarette stores. The law also amends Section 17-506, requiring the posting of “Smoking” and “No Smoking” signs as directed by the Health Commissioner, *to now require the posting of signs indicating “Electronic Cigarette Use Permitted” or “Electronic Cigarette Use Prohibited.”* A parallel requirement is added to the requirement for theater owners to show, *for at least five seconds prior to the showing of a feature motion picture, a notice that both smoking and using electronic cigarettes are prohibited.* Premise owners must also comply with the new signage and notice requirements.

Finally, the law adds new Administrative Code Sections 17-513.3 and 17-513.4, requiring both retail tobacco stores and retail electronic cigarette stores to register with the Department of Health and Mental Hygiene. The DOHMH is also directed to develop a system for review and verification of total annual gross sales of both types of stores, to ensure that the sale of tobacco, or electronic cigarettes respectively, exceeds 50% of gross sales, qualifying the premises as either retail tobacco stores where smoking is permitted, or retail electronic cigarette stores where use of electronic cigarettes is permitted.

Violations of the Smoke-Free Air Act, including the new prohibitions against using electronic cigarettes, are punishable by civil penalties enforced primarily by the Department of Health and Mental Hygiene.

*See Interim Order 13, series 2014*

This Legal Bureau Bulletin was prepared by  
the Legislative Affairs Unit.

## **APPENDIX**

### **NY SAFE ACT CHAPTERS 1, 55 PART FF, 98 OF THE LAWS OF 2013 DETAILED SUMMARY**

#### **Assault Weapons, Large Capacity Ammunition Feeding Devices**

Prior to enactment of Chapter 1, Possession of assault weapons and large capacity ammunition feeding devices was a class D felony, pursuant to Penal Law Section 265.02, Criminal Possession of a Weapon in the 3<sup>rd</sup> degree. That section of the law will continue to prohibit such possession, however Chapter 1 makes significant changes to the definitions applicable to these devices, provides for some grandfathering of devices lawfully held before the law changed, imposes new restrictions on transfer of the devices, and creates registration requirements for the devices.

- **Definition of Assault Weapon** - the definition of “assault weapon” contained in Penal Law Section 265.00(22) is amended to generally expand the universe of weapons falling into this prohibited category, by changing from two to one the number of military-type features which must be present on the weapon to define it as an assault weapon. Specifically, paragraphs a, b and c of Section 265.00(22) set forth the list of characteristics that will render a semiautomatic rifle, semiautomatic shotgun, or semiautomatic pistol an assault weapon, for example, a folding or telescoping stock, a thumbhole stock, a second handgrip or a protruding grip that can be held by the non-trigger hand, as well as other characteristics particular to each type of weapon. In addition, Section 265.00(22)(d) separately adds a “revolving cylinder shotgun” to the list of prohibited assault weapons.

The balance of Section 265.00(22) sets forth categories of weapons which will not be considered assault weapons for purposes of the new law. Paragraph g(i) through (iii) resembles the prior law, and excludes from the definition: any rifle, shotgun or pistol that is manually operated by bolt, pump, lever or slide action, or has been rendered permanently inoperable, or is an antique firearm as defined in federal law; a semiautomatic rifle that cannot accept a detachable magazine holding more than 5 rounds; and a semiautomatic shotgun that cannot hold more than 5 rounds in a fixed or detachable magazine.

Paragraphs e and f address assault weapons which were lawfully possessed before enactment of this law, and their possession will remain lawful, subject to certain restrictions on transfer set forth in paragraph h of the same subdivision as well as a new registration requirement in subdivision 16-a of Penal Law Section 400.00, both of which will be discussed below. Similarly, paragraph g(v) exempts from the definition of assault weapons a weapon which is validly registered pursuant to Section 400.00(16-a).

Paragraph g(iv) seems to carry forward language from the prior law which excluded a number of specific weapons that were excluded from the federal assault weapons ban, in an Appendix A which had been attached to a federal statute, 18 U.S.C. §922; Appendix A was repealed when the federal assault weapons ban lapsed in 2004. Therefore, it seems that this subparagraph should be ignored.

Paragraph g(vi) exempts weapons manufactured at least 50 years “prior to the current date,” as long as they are validly registered as discussed below. Although it is not clear, the subparagraph seems to indicate that replicas of such weapons will not get the benefit of this exemption, and will be judged separately regarding whether they fall within the definition of “assault weapon.” The 50-year time period is a rolling time period, so that going forward weapons aging into 50 years will gain the benefit of this exemption.

The State Police is directed to create an internet website educating the public as to what constitutes an assault weapon and what makes and models require registration.

- **Definition of Large Capacity Ammunition Feeding Device** – Penal Law Section 265.00(23) was amended to expand the definition of large capacity ammunition feeding device in ways that were subsequently eliminated by additional legislation, with the ultimate result that the only change is to define a large capacity ammunition feeding device as any device that contains more than 7 rounds, in addition to the original definition as a device having the capacity for, or being readily convertible to accept, more than 10 rounds.

There are two types of devices which are excluded from the definition: an attached tubular device designed to accept .22 caliber rimfire ammunition (as in the current law); and a feeding device that is a curio or relic over 50 years old. However, the new law imposes conditions on the lawful possession of the curio or relic device: it must be capable only of being used in a weapon that is at least 50 years old, must be possessed by someone not prohibited by federal or state law from owning a firearm, and must be registered as required by Penal Law Section 400.00(16-a), discussed below.

- **Transfer of Assault Weapons and Large Capacity Ammunition Feeding Devices** – Chapter 1 adds a new paragraph h to Penal Law Section 265.00(22), the definition of assault weapons, to create limitations on transfer of assault weapons and large capacity ammunition feeding devices which were legally possessed before 1/15/13. These grandfathered weapons and devices may only be sold to, exchanged with or disposed of to a purchaser authorized to possess them, or to an individual or entity outside of the state. The law requires that any out-of-state transfer be reported to “the entity wherein the weapon is registered” within 72 hours of the transfer, without further explanation; it is probable but uncertain that the entity which must receive the notification is the local licensing officer. A violation of these new restrictions on transfer is a class A misdemeanor, unless, in the case of a newly-prohibited large capacity ammunition feeding device, the device is transferred by 1/15/14.

A separate provision of law applies to ammunition feeding devices which are curios or relics defined in amended Penal Law Section 265.00(23); they may be transferred into the state at any time as long as they are registered within 30 days of the transfer, and they may be transferred notwithstanding the general restrictions on transfer of large capacity ammunition feeding devices, provided that the transfer is accomplished in accordance with new requirements including a background check.

- **Registration of Assault Weapons and Large Capacity Ammunition Feeding Devices** – Penal Law Section 400.00 is amended by adding a new subdivision 16-a, requiring the owner of an assault weapon which was lawfully possessed before enactment of Chapter 1 to register the weapon with the State Police. The owner must apply for registration by 4/15/14, on a form to be made available by the State Police by 4/15/13, or may amend a license to possess the weapon issued pursuant to Penal Law Section 400.00 by 4/15/14. A separate provision is made for weapons at least 50 years old which are transferred into the state – they may be registered at any time, as long as they are registered within 30 days of entering the state.

Similarly, a large capacity ammunition feeding device that is defined as a curio or relic device must be registered under Penal Law Section 400.00(16-a) by 4/15/14, however if it is transferred into the state it may be registered at any time, as long as it is registered within 30 days of entering the state.

For assault weapons and large capacity ammunition feeding devices that are at least 50 years old, registration is transferable, provided that the seller notifies the State Police within 72 hours of the transfer, and the buyer provides the required registration information so that the State Police may ensure that the buyer is not prohibited from possessing the item by federal or state law.

Penal Law Section 400.00(16-a) provides that a knowing failure to apply to register an assault weapon by 4/15/14 is a class A misdemeanor; a person who unknowingly fails to validly register the weapon by 4/15/14 shall be given a warning by an appropriate law enforcement authority and given 30 days to apply to register it, or surrender it. Failure to apply for registration within the 30 day period shall result in the weapon being removed by an appropriate law enforcement authority, and declared a nuisance.

All registrants are required to recertify to the State Police every five years, and failure to recertify will result in revocation of the registration.

- **Exemptions** – Chapter 1 amends Penal Law Section 265.20(a)(3), which contains an exemption from prohibitions on possessing weapons for those granted licenses under Penal Law Sections 400.00 and 400.01. The new law expands the exemption to include grandfathered assault weapons which are lawfully registered or licensed. It further requires a firearms licensing officer to notify the State Police if the licensing officer revokes a firearms license so that the grandfathered assault weapon may be registered pursuant to Penal Law Section 400.00(16-a) instead, unless the owner is no longer permitted to possess the weapon under federal or state law. Failure to register the weapon may only be punished under the terms of Penal Law Section 400.00(16-a), making it a class A misdemeanor, if the owner would otherwise be lawfully permitted to possess the weapon if it had been properly registered.

In addition, a new paragraph 7-f is added to Penal Law Section 265.20(a), providing an exemption for possession of an ammunition feeding device containing up to 10 rounds at

certain categories of firing ranges, shooting competitions, or organized matches, as specified in the new law.

*Note that an amendment to Penal Law Section 265.20(a) exempts police officers and peace officers from the new restrictions on the transfer of grandfathered assault weapons and large capacity ammunition devices contained in Penal Law Section 265.00(22)(h).*

- **Criminal Possession of Large Capacity Ammunition Feeding Devices – Chapter 1** creates two new offenses applicable to possession of large capacity ammunition feeding devices. Penal Law Section 265.36, Unlawful Possession of a Large Capacity Ammunition Feeding Device, a class A misdemeanor, prohibits knowing possession of such a device if it was manufactured before 9/13/94, and the person lawfully possessed the device before 3/16/13; and the device has the capacity to accept, or can readily be restored or converted to accept, more than 10 rounds.

However, Section 265.36 provides a defense to a person who has a reasonable belief that the device may lawfully be possessed and who surrenders or lawfully disposes of it within 30 days of being notified by law enforcement that possession is unlawful. The law contains a rebuttable presumption that a person knows possession is unlawful if he or she is so notified by law enforcement.

New Penal Law Section 265.37, Unlawful Possession of Certain Ammunition Feeding Devices, prohibits knowing possession of an ammunition feeding device which contains more than 7 rounds. If the device is possessed within the person's home, a first offense is a criminal violation punishable by a fine of \$200, and a subsequent offense is a class B misdemeanor, punishable by a fine of \$200 and up to three months' imprisonment. If the device is possessed anywhere but in the person's home, a first offense is a class B misdemeanor punishable by a fine of \$200 and up to six months' imprisonment; a subsequent offense is a class A misdemeanor.

Note that Chapter 1 carved out certain ammunition feeding devices from the scope of Criminal Possession of a Weapon in the third degree, Penal Law Section 265.02(8), the general prohibition against possessing large capacity ammunition feeding devices. These two new Penal Law Sections, 265.36 and 265.37, are apparently intended to address possession of the devices which were removed from Section 265.02(8), the class D felony crime.

*Note that an amendment to Penal Law Section 265.20(a) exempts police officers and peace officers from these two new crimes regarding the possession of large capacity ammunition devices, Penal Law Sections 265.36 and 265.37.*



## New Crimes

- **Criminal Facilitation** – Chapter 1 adds a new Penal Law Section 115.20 which in effect expands the four degrees of the crime of Criminal Facilitation (Penal Law Sections 115.00 through 115.08) to include making available a “community gun.” New Section 115.20 defines criminal facilitation to include making available or otherwise disposing of a “community gun,” which in fact aids a person to commit a crime. “Community gun” is defined as a firearm that is actually shared, made available or disposed of among or between two or more persons, at least one of whom is not authorized to possess it, and “sharing” includes knowingly placing the firearm in a location accessible and known to one or more other persons.
- **Recklessly Injuring a Child** – The new law amends Penal Law Section 120.05, Assault in the 2<sup>nd</sup> degree, to make it a class D felony to recklessly cause physical injury to a child under 18 by intentional discharge of a firearm, rifle or shotgun.
- **Murder of First Responder** – Chapter 1 amends Penal Law Sections 125.26, Aggravated Murder, and 125.27, Murder in the 1<sup>st</sup> degree, to expand the categories of first responders whose intentional murder will subject the defendant to prosecution for these class A-I felonies: firefighters, EMTs, ambulance drivers, paramedics, physicians or registered nurses involved in a first response team. The victim must be engaged in emergency response activities at the time, and the defendant must know or reasonably should know that the intended victim was such first responder.
- **School Grounds** – Chapter 1 upgrades from a class A misdemeanor to a class E felony the criminal possession of a weapon on school grounds, by deleting current subdivision 3 from Penal Law Section 265.01, Criminal Possession of a Weapon in the 4<sup>th</sup> degree, and enacting the same language as a separate, new Penal Law Section 265.01-a. *Note that an amendment to Penal Law Section 265.20(a) exempts police officers and peace officers from this new crime, Penal Law Section 265.01-a.*
- **Possession of Firearm** – Chapter 1 adds a new Penal Law Section 265.01-b, “Criminal Possession of a Firearm,” a class E felony, committed when a person possesses any firearm (unloaded), or knowingly fails to register a grandfathered assault weapon as required by Penal Law Section 400.00(16-a) (discussed above). *Note that an amendment to Penal Law Section 265.20(a) exempts police officers and peace officers from a portion of this new crime, Penal Law Section 265.01-b(1), as it relates to the possession of a firearm; the exemption does not extend to Penal Law Section 265.01-b(2), regarding failure to register the grandfathered assault weapon .*
- **Criminal Possession of a Weapon in the 3<sup>rd</sup> degree** – Chapter 1 expands current Penal Law Section 265.02 by adding two new subdivisions 9 and 10, making it a class D felony to possess an unloaded firearm and commit a “drug trafficking felony” or a violent felony offense as part of the same criminal transaction. A “drug trafficking felony” is defined in new subdivision 21 of Penal Law Section 10.00 as a violation of one of several drug-related felonies: Penal Law Section 220.28 (use of a child); Penal Law Sections 220.34, 220.39, 220.41, 220.43 (criminal sale of a controlled substance in the 4<sup>th</sup> through 1<sup>st</sup> degrees); Penal Law Section 220.44 (school grounds); Penal Law Sections 220.74 and

220.75 (manufacture of methamphetamine in the 2<sup>nd</sup> and 1<sup>st</sup> degrees); and Penal Law Section 220.77 (major trafficker).

Chapter 1 also amends subdivision 8 of Penal Law Section 265.02, prohibiting possession of a large capacity ammunition feeding device, by excluding such devices which were lawfully possessed before 3/16/13 that have a capacity of, or can readily be restored or converted to accept more than 7 but less than 11 rounds, or that were manufactured before 9/13/94 and can readily be restored or converted to accept more than 10 rounds.

- **Criminal Purchase or Disposal** – Chapter 1 amends Penal Law Section 265.17, Criminal Purchase of a Weapon, a class A misdemeanor, to raise the penalty to a class D felony, and to address disposal as well as purchase of a weapon. The new crime, Criminal Purchase or Disposal of a Weapon, makes it illegal to dispose of a firearm, rifle or shotgun to another person, knowing that the other person is ineligible to possess a firearm. Regarding criminal purchase, the amendment also removes a reference to “attempt” to purchase, and requires an actual purchase in order to charge this section of law.
- **Aggravated Criminal Possession** – The law creates a new Penal Law Section 265.19, Aggravated Criminal Possession of a Weapon, a class C felony, which is committed when a person possesses a loaded firearm and also commits a violent felony offense or a “drug trafficking felony.”
- **Safe Storage** – Chapter 1 enacts a new Penal Law Section 265.45, “Safe Storage of Rifles, Shotguns, and Firearms,” a class A misdemeanor. The crime is committed when an owner or custodian of a firearm, rifle or shotgun fails to safely store the weapon when the weapon is out of his or her immediate possession and control, if the owner or custodian resides with a person prohibited from possessing a firearm under certain provisions of federal and state law. “Safe” storage is defined to be securely locking the weapon in a safe or other locked container, or otherwise rendering it incapable of being fired by use of a gun locking device.

The storage requirement imposed by this new Penal Law section is triggered by the following categories of person residing with the owner or custodian: convicted of a felony; adjudicated mentally defective or committed to a mental institution; subject to an order of protection relating to an intimate partner; or convicted of a specified misdemeanor crime of domestic violence, for a period of five years after conviction or completion of sentence, whichever is later.

- **Report of Loss or Theft of Weapon or Ammunition** – Penal Law 400.10 is amended to require the reporting of loss or theft not only of a firearm, rifle or shotgun, but also the loss or theft of ammunition, where it is accompanied by a loss of the weapon; if the owner is a dealer in firearms or a seller of ammunition, the loss or theft of ammunition alone must be reported. The failure to report a loss or theft in all cases is upgraded from a fine of \$100 to a class A misdemeanor.
- **Aggravated Enterprise Corruption** – The law adds a new Penal Law Section 460.22, “Aggravated Enterprise Corruption,” a class A-I felony, committed when a person

commits the crime of Enterprise Corruption and two or more of the acts constituting the pattern of criminal activity are class B felonies or higher, and at least two acts are armed felonies, or one act is an armed felony and one is a criminal purchase of a firearm, rifle or shotgun for use of another person ineligible to possess the weapon, or one act is a class B violent felony and two acts are criminal purchases of a firearm, rifle or shotgun for use of another ineligible to possess it.

### **Increased Criminal Penalties**

Chapter 1 creates a mandatory minimum sentence of five years for carrying a loaded firearm during a drug trafficking felony or violent felony offense, as well as a mandatory minimum sentence of 3-1/2 years for carrying an unloaded firearm during a violent felony offense.

### **Background Check for Private Sale of Weapons**

Chapter 1 adds a new Section 898 to the General Business Law, requiring a National Instant Criminal Background check for all private sales, exchanges or disposals of firearms, rifles and shotguns except between members of an immediate family (limited to spouses, domestic partners, children and step-children). The background check is to be conducted by a firearms dealer who must maintain a record of the check accessible law enforcement, and may charge a fee of up to \$10. The record of the background check will not be subject to the Freedom of Information Law. Knowing violation of Section 898 is a class A misdemeanor.

*See FINEST Message No. 2023001 dated April 17, 2013.*

### **Exemptions for Retired Law Enforcement Officers**

The new law contains some limited exemptions from the new restrictions regarding possession of assault weapons and large capacity ammunition feeding devices, for certain retired law enforcement officers. The new exemptions apply only to “qualified retired New York or federal law enforcement officers,” as defined in new subdivision 25 of Penal Law Section 265.00. The retired officer must be a person who has retired from being a police officer, a peace officer, or a federal law enforcement officer, as those terms are defined in the Criminal Procedure Law, and must fulfill the following requirements:

- separated in good standing from a public agency located within New York State for which the person was employed as a police officer, peace officer, or federal law enforcement officer;
- before separation, was authorized to engage in or supervise the enforcement of law and must have had statutory arrest powers, according to the Criminal Procedure Law;
- before separation, must have either served for at least five years as a police, peace, or law enforcement officer; or was separated from the agency due to a job-related disability as determined by the agency, following the completion of any probationary

period;

- not found by a qualified medical professional employed by the agency to be unqualified for service for reasons related to mental health;
- had not entered into an agreement with the agency acknowledging that he/she is not qualified for mental health reasons; and
- not otherwise prohibited by New York or federal law from possessing a firearm.

For qualified retired law enforcement officers, a new subdivision e added to Penal Law Section 265.20, states that if certain conditions are met, the following Penal Law Sections **do not apply** to qualified retired law enforcement officers: Section 265.02(8) (Criminal Possession of Weapon in the 3<sup>rd</sup> degree – large capacity ammunition feeding device), Section 265.36 (Unlawful Possession of a Large Capacity Ammunition Feeding Device) and Section 265.37 (Unlawful Possession of Certain Ammunition Feeding Devices).

The exemptions for possessing large capacity ammunition feeding devices only apply to devices issued to or purchased by the officer in the course of official duties, and owned by the officer at time of retirement, but will also include comparable replacements. Further, the agency that employed the officer must have qualified the officer for the use of the associated weapon in accordance with applicable state or federal standards within 12 months prior to retirement. After retirement, the officer must meet the qualification standards within three years of retiring, and at least once every three years thereafter.

Finally, with respect to assault weapons, a new paragraph a-1 is added to Penal Law Section 400.00(16-a), providing that a qualified retired law enforcement officer may own an assault weapon, notwithstanding that its possession may otherwise be prohibited pursuant to the NY SAFE Act. However, the weapon must have been issued to or purchased by the officer prior to retirement and in the course of official duties, the officer must have been qualified for the weapon by the agency that employed the officer within 12 months prior to retirement, and the officer must register the weapon with the State Police pursuant to the provisions of Penal Law 400.00(16-a) within 60 days of retirement.